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No. 87-1881

In the Supreme Court of the United States

October Term, 1987

JAN MARIE WICKSTROM, by H. D. WICKSTROM and JOHN RING, conservators of the person and estate of JAN MARIE WICKSTROM,

Petitioner,

v.

MAPLEWOOD TOYOTA, INC., a Minnesota corporation, TOYOTA MOTOR DISTRIBUTORS, INC., a California corporation, TOYOTA MOTOR SALES, U.S.A., INC., a California corporation, TOYOTA MOTOR CORPORATION, a Japanese corporation, and LOUIS CHAPMAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the National Traffic and Motor Vehicle Safety Act of 1966 and Federal Motor Vehicle Safety Standard 208, as amended by 15 U.S.C. § 1410b, expressly or impliedly preempt common law actions seeking to impose tort liability upon motor vehicle manufacturers who, in accordance with federal law, install lap and shoulder belt protection systems rather than airbags in passenger cars manufactured for sale in the United States.

PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES

Pursuant to Rule 28.1, respondents state that Maplewood Toyota, Inc., is a Minnesota corporation and has no parent companies, subsidiaries, or affiliates. Toyota Motor Distributors, Inc., is a California corporation and a wholly-owned subsidiary of Toyota Motor Sales, U.S.A., Inc., which is also a California corporation and a wholly-owned subsidiary of Toyota Motor Corporation, a share company organized under the laws of Japan. There is no public holding, or market for, the stock of Toyota Motor Distributors, Inc., or Toyota Motor Sales, U.S.A., Inc., or the stock of any other United States subsidiary or affiliate of Toyota Motor Corporation. The stock of Toyota Motor Corporation is traded on some public exchanges in Japan, but is not regularly traded over-the-counter or on any exchange in the United States.

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BRIEF IN OPPOSITION

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The question presented by this petition for a writ of certiorari involves Article VI, clause 2, of the United States Constitution ("supremacy clause"); sections 1392(d) and 1397(c) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 *et seq.* ("Safety Act"); and Federal Motor Vehicle Safety Standard 208, 49 C.F.R. § 571.208 ("FMVSS 208"). All of these constitutional provisions, statutes, and regulations appear in the petition at pp. 2-3 and A-18 through A-20.

However, the petition fails to cite, set forth, or argue pertinent provisions of the 1974 amendments to the Safety Act, as codified in 15 U.S.C. § 1410b:

> § 1410b. **Occupant restraint systems**
>
> (a) **Amendment of Federal motor vehicle safety standard numbered 208; effective date.** Not later than 60 days after the date of enactment of this section, the Secretary shall amend the Federal motor vehicle safety standard numbered 208 (49 CFR 571.208), so as to bring such standard into conformity with the requirements of paragraphs (1), (2), and (3) of subsection (b) of this section. Such amendment shall take effect not later than 120 days after the date of enactment of this section.
>
> (b) **Federal motor vehicle safety standard requirements.** After the effective date of the amendment prescribed under subsection (a):
>
> (1) . . .
>
> (2) Except as otherwise provided in paragraph (3), no Federal motor vehicle safety standard respecting occupant restraint systems may—
>
> (A) have the effect of requiring, or
>
> (B) provide that a manufacturer is permitted to comply with such standard by means of,
>
> an occupant restraint system other than a belt system.
>
> (3) . . .
>
> (A) . . .

(B) Paragraph (2) shall not apply to any Federal motor vehicle safety standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c), unless it is disapproved by both Houses of Congress by concurrent resolution in accordance with subsection (d). . . .

STATEMENT OF THE CASE

While fleeing Minneapolis police officers after a bank robbery on March 31, 1983, Louis Chapman sped the wrong way down Interstate 94 in a full-size 1973 Pontiac Catalina and smashed into a subcompact 1983 Toyota Tercel owned and operated by petitioner Jan Marie Wickstrom.

Following the accident, on May 15, 1985, petitioner brought action in the Second Judicial District Court, County of Ramsey, State of Minnesota, against Chapman, who has not made an appearance in this matter, and the Toyota respondents, who comprise the chain of manufacture and distribution of petitioner's vehicle. In her complaint against the Toyota respondents, petitioner did not allege that any defect in the design or manufacture of her automobile caused the accident itself; instead, she claimed, *inter alia*, that the absence of airbags in the vehicle enhanced her injuries in the accident ("no airbag claim").

In response to petitioner's no airbag claim, the Toyota respondents moved for partial summary judgment on the ground that the Safety Act and FMVSS 208, as amended by 15 U.S.C. § 1410b, expressly and impliedly preempt common law actions seeking to impose tort liability upon motor vehicle manufacturers who, in accordance with federal law, install lap and shoulder belt protection systems rather than airbags in passenger cars manufactured for sale in the United States.

On March 12, 1987, the district court granted the motion, finding both express and implied preemption. Pursuant to Rule 54.02 of the Minnesota Rules of Civil Procedure, the court also found

no just reason for delay of entry of final judgment dismissing petitioner's no airbag claim; thus, entry of final judgment on that claim alone occurred on March 24, 1987. *See* Pet. App. A-8 to A-18 ("Order Granting Partial Summary Judgment" and "Corrected Judgment").

On June 19, 1987, petitioner appealed that judgment to the Minnesota Court of Appeals, which unanimously affirmed the district court on December 22, 1987. *See Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838 (Minn. App. 1987), reprinted in Pet. App. A-1 to A-7.

On January 21, 1988, petitioner requested the Minnesota Supreme Court to exercise discretionary review of the Court of Appeals decision. However, in an order filed on February 17, 1988, the Minnesota Supreme Court denied further review. *See* Pet. App. A-1 ("Order").

On May 16, 1988, the Toyota respondents received this petition for a writ of certiorari, which invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(3).

Further proceedings on petitioner's other claims against respondents have been held in abeyance in the state district court pending appellate disposition of petitioner's no airbag claim.

ARGUMENT

This Court should deny the petition for a writ of certiorari on principally three grounds. First, the decision of the Minnesota Court of Appeals does not conflict with any decision of this Court, a federal court of appeals, or another state court of last resort. Additionally, the decision is correct, conforming to the overwhelming weight of authority on the question presented, and warranting no further review by the Minnesota Supreme Court. Finally, the Court should await consideration of the question presented by a number of appellate courts rather than undertake this, the very first appellate decision of its kind.

1. The Petition for a Writ of Certiorari Fails to Present a Conflict Requiring Review by This Court.

Perhaps by oversight, the petition neglects to inform this Court that the decision below constitutes the first and only appellate court opinion on the preemptive effect of the Safety Act on no airbag claims. As such, the decision cannot possibly conflict with any on-point decision of this Court, a federal court of appeals, or another state court of last resort.

Nevertheless, petitioner contrives a number of alleged conflicts in an effort to obtain review on certiorari pursuant to Rule 17.1(b) and Rule 17.1(c). Those purported conflicts disappear upon critical review.

a. No conflict between state courts of last resort.

On the basis of a few trial court decisions, petitioner presumes (Pet. 4–5) that, "Had Petitioner been injured in Massachusetts, California, Pennsylvania, or a number of other jurisdictions, she would have been able to make her airbag claim before a jury." At best, however, those decisions represent a minority viewpoint[1] lacking appellate acceptance by any state court at this time. Accordingly, petitioner can only speculate that the appellate courts of other states would reach a different result than the Minnesota Court of Appeals, and she cannot substitute sheer speculation for actual conflict among state courts of last resort in seeking review on certiorari.

b. No conflict between a state court of last resort and a federal court of appeals.

Nor can petitioner claim any conflict between the decision of the Minnesota Court of Appeals and a decision of a federal court of

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[1] Petitioner purports to provide this Court with a complete "Summary of State and Federal Cases Addressing Preemptive Effect of Safety Act on Airbag Claims" (Pet. App. A-25 to A-28). However, that "Summary" omits 18 of the 46 cases deciding the issue, including a number of unfavorable decisions which respondents had previously identified for the courts—and petitioner—below. Moreover, petitioner's "Summary" erroneously includes a case dealing with the Safety Act's preemption of "no rear seat shoulder harness claims," not no airbag claims. For a list of all known airbag preemption decisions, both state and federal, see Appendix A-1.

appeals. No federal appellate court has addressed the preemptive effect of the Safety Act on air bag claims; therefore, no conflict could possibly exist between the decision below and a federal court of appeals decision.

Nevertheless, petitioner attempts to manufacture a conflict by citing (Pet. 5–7) and appending (Pet. A-20 to A-25) twenty-one cases which allegedly "concluded that Congress did not intend to preempt common law claims" (Pet. 7). As recognized by the courts below, petitioner either misreads or miscites each case. None of the cases cited by petitioner declined to find preemption when the plaintiff's common law action involved the **same** aspect of motor vehicle performance or equipment as an on-point federal standard; rather, each case concerned a federal motor vehicle safety standard governing aspects of vehicle performance or equipment **different** from the specific defect alleged by the plaintiff. *See* Wilton, *Federalism Issues in "No Airbag" Tort Claims: Preemption and Reciprocal Comity*, 61 Notre Dame L. Rev. 1, 17 n.108 & 24–27 (1985) (distinguishing cases of the type cited by petitioner).

In this sense, petitioner's authority actually confirms, rather than conflicts, with the interpretation given to the Safety Act by the court below. Section 1392(d), the preemption provision, preempts those common law claims "applicable to the same aspect of performance . . . . or item of equipment" as a federal motor vehicle safety standard; however, section 1397(c), the savings clause, preserves any claims based on aspects of performance or equipment not covered by federal regulation.

Significantly, therefore, none of the cases cited by petitioner addresses the specific claim of defect (no airbags), the specific federal motor vehicle safety standard (FMVSS 208), or the specific aspect of vehicle performance or equipment (occupant restraint systems) at issue in this case. Accordingly, petitioner cannot fashion a conflict between the Minnesota Court of Appeals decision in this case and an on-point federal court of appeals decision. Indeed, no such conflict could exist, given that the opinion below represents the first appellate decision, federal or state, addressing the Safety Act's preemption of no airbag claims.

c. No conflict with any Supreme Court decision.

Failing to establish any conflict with a decision of another state court of last resort or a federal court of appeals, petitioner turns to selected decisions of this Court and seeks (Pet. 9 & 13) the benefit of a presumption against preemption, especially where preemption would leave a plaintiff without an adequate remedy at law. But, as this Court observed in *International Paper Co. v. Ouellette*, 107 S. Ct. 805, 811 (1987), that presumption simply means that the "courts should not lightly infer pre-emption," not that the courts can or must overlook an actual conflict between federal and state law. Thus, the preemption issue turns not on presumptions, but "on the peculiarities and special features of the federal regulatory scheme in question." *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638 (1973). Here, the Safety Act—unlike the statutes involved in the cases cited by petitioner—contains an express pre-emption provision. Moreover, that provision only preempts common law actions based upon "the same aspect of [vehicle] performance . . . or item of equipment" as an on-point federal standard, rather than occupies the entire field of motor vehicle regulation. Consistent with the claimed presumption, therefore, petitioner retains an adequate remedy at law in the form of her other common law claims against respondents in this case.

Still lacking a direct conflict with a Supreme Court decision, petitioner argues by analogy to *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 283, 256 (1984), that Congress intended to "tolerate the tension" between uniform federal standards and common law damage awards (Pet. 12–13). How Congress evidenced that intention in the Safety Act remains unclear from the petition, since petitioner never completes the analogy through any comparative analysis of the statutes involved in this case and in *Silkwood*. In any event, however, "the peculiarities and special features of the federal regulatory scheme in question," *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. at 638, would defeat the analogy.[2] Unlike the Safety Act, the Atomic Energy Act involved in *Silkwood* con-

[2]For a more detailed explanation of the statutory provisions and legislative history of the Safety Act in the context of this federal preemption issue, see pp. 9–11 and 16 *infra*.

tains no express preemption provision. Moreover, Congress amended the Atomic Energy Act to provide an indemnification scheme for operators of federally licensed nuclear facilities, which would have been totally unnecessary if Congress intended the Act to preempt common law actions. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. at 251–56. In contrast, Congress amended the Safety Act to prohibit the Department of Transportation from requiring airbags without prior congressional approval and special hearing procedures, thus reserving this particular issue to the federal government rather than to state common law. *See* 15 U.S.C. § 1410b. Finally, judicial recognition of no airbag claims would do far more than foster a "tension" with FMVSS 208; it would destroy the standard. No airbag claims, if successful, would require a vehicle to contain what FMVSS 208 does not require (airbags) and would forbid what FMVSS 208 expressly permits (the manufacturer's choice of an approved occupant restraint system). *See* pp. 11–13 *infra*.

Thus, petitioner cannot claim as a basis for review on certiorari a direct conflict between the opinion below and any decision of the Supreme Court. Nor can she create a conflict by analogy to other decisions of this court, which turn on statutory provisions and legislative histories unique to those cases.

2. The Minnesota Court of Appeals Reached the Correct Result.

This Court should also deny the petition for a writ of certiorari because the Minnesota Court of Appeals correctly decided the question presented for review. The decision comports with the clear weight of authority; the Minnesota Supreme Court found no cause for discretionary review; and, in its argument for review, the petition ignores decades of Supreme Court precedent.

a. Comports with the clear weight of authority.

The essential correctness of the Minnesota Court of Appeals decision derives in part from the substantial, if not overwhelming, weight of authority confirming its judgment. *See* note 1 *supra*. For example, of the twenty federal district courts to consider the issue, sixteen agree that the Safety Act, FMVSS 208, and 15 U.S.C.

§ 1410b either expressly or impliedly preempt the assertion of no airbag claims. *See* Appendix A-1.

The majority of state trial courts concur in this view. *See* note 1 *supra* and Appendix A-1. Even the contrary decisions tend to predate the emerging federal case law and frequently consist of one-page "summary orders . . . contain[ing] no analysis of the preemption issue." *Cox v. Baltimore County*, 646 F. Supp. 761, 763 n.3 (D. Md. 1986). At this time, moreover, only this case carries the imprimatur of appellate court review.

Well-considered academic commentary also supports the preemption of no airbag claims. *See* Wilton, *Federalism Issues in "No Airbag" Tort Claims: Preemption and Reciprocal Comity*, 61 Notre Dame L. Rev. 1, 12-27 (1985); Wilton & Campbell, *Effect of Federal Safety Regulations on Crashworthiness Litigation*, 22 A.B.A. Tort & Ins. L.J. 554, 561-67 (1987). *See also* Hoenig, *Resolution of "Crashworthiness" Design Claims*, 55 St. John's L. Rev. 663, 706-16 (1981); Souk, *Airbag Litigation Crisis*, Prod. Liab. Cases & Trends (Prentice-Hall), p. 4 (Apr. 1987).

b. Denial of discretionary review by the Minnesota Supreme Court.

That the Minnesota Supreme Court decided to deny further review also seems significant in this case. As an error correcting body, the Minnesota Supreme Court had an opportunity to consider all the arguments repeated in this petition for review. It apparently found no error or other cause for discretionary review. In fact, none exists.

c. Petitioner's reliance on arguments discredited by decades of Supreme Court precedent.

In 1966, Congress determined that "[t]he centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires . . . not only strong and adequately enforced, but . . . uniform [motor vehicle safety standards] throughout the country." S. Rep. No. 1301, 89th Cong., 2d Sess. 4, *reprinted in* 1966 U.S. Code Cong. & Ad. News 2709, 2720. It therefore concluded that "the **primary** responsibility for

regulating the national automotive manufacturing industry must fall squarely upon the Federal Government" and that the states should play only "a **consultive** role in the setting of standards." *Id.* at 2712 (emphasis added).

Accordingly, Congress enacted the National Traffic and Motor Vehicle Safety Act and directed the Department of Transportation to issue "reasonable, practicable and appropriate" federal motor vehicle safety standards that "meet the need for motor vehicle safety" throughout the country. *See* 15 U.S.C. § 1392(a), (f). To further assure the "primary" role of the federal government in the establishment of "uniform" motor vehicle safety standards, Congress included a preemption provision in the Safety Act:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no state or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. . . .

Id. § 1392(d).

Rather than occupy the entire field of motor vehicle safety, section 1392(d) only preempts state standards "not identical to" the federal standards and "applicable to the same aspect of performance . . . or item of equipment" as the federal regulations. The states remain free under the Act to regulate aspects of performance or items of equipment not governed by a federal standard or even to enforce identical regulations on aspects of performance or equipment covered by the federal standards.

Nevertheless, section 1392(d) contains an "unusually strong preemption clause" in comparison to other federal statutes. As one commentator explained:

> It is noteworthy that the National Traffic and Motor Vehicle Safety Act of 1966 is unlike other federal regulatory schemes, which set minimum standards and allow states to impose more stringent requirements. . . .

> . . . States may enforce only "identical" regulations under 15 U.S.C. § 1392(d), not ones which are less or even more demanding. The choice of the word "identical" rather than "inconsistent" manifests an apparent intent to preempt all state regulations which do not mirror the precise requirements of federal regulations promulgated under the Act, rather than merely those state regulations which do not comport with the general policies underlying the Act.
>
> This unusually strong preemption clause in the statute was intended to express serious congressional concern for the need for uniformity in safety standards for the sake of both the automobile industry and the driving public . . . .

Wilton, 61 Notre Dame L. Rev. at 14–15 (footnotes omitted).

Or, as Congress itself summarized the purpose of section 1392(d):

> Basically this preemption subsection is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards.

H. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966).

Upon this historical foundation, the proper application of section 1392(d) to petitioner's no airbag claim becomes clear and evident. Pursuant to its authority under the Safety Act, the Department of Transportation promulgated FMVSS 208, which now—and at the time of manufacture—permitted the Toyota respondents to install seat belts, without airbags, in petitioner's vehicle. Petitioner contends that her vehicle should have contained both seat belts and airbags. Because the requirement advocated by petitioner applies to "the same . . . item of equipment" as FMVSS 208 (occupant restraint systems) and because petitioner's requirement (both seat belts and airbags) is "not identical" to FMVSS 208 (seat belts alone permitted), section 1392(d) expressly preempts petitioner's no airbag claim.

Even if not expressly preempted, petitioner's no airbag claim must fall under the implied preemption doctrine "as an obstacle to the

accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). In effect, petitioner's no airbag claim would require what federal law makes optional (the installation of airbags) and would forbid what federal law expressly permits (the use of seat belts or other restraint systems without airbags). *Cf. Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256 (1985) (state law requiring counties to distribute federal funds in one specific way conflicted with federal statute permitting counties to use such funds for any valid governmental purpose); *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 142 (1982) (state law precluding enforcement of due-on-sale clauses in home mortgages conflicted with federal regulation permitting, but not requiring, the use of such clauses).

More specifically, petitioner's no airbag claim would frustrate the purposes of the Safety Act, FMVSS 208, and 15 U.S.C. § 1410b in at least three ways.

First, allowing state courts and juries to determine the need for airbags on an *ad hoc* basis would severely undermine the Safety Act's objective of "uniform [motor vehicle safety standards] throughout the country." *See* S. Rep. No. 1301, 89th Cong., 2d Sess. 4, *reprinted in* 1966 U.S. Code Cong. & Ad. News 2709, 2720. "[T]he vagaries of jury standards of safety could result in a different result in each suit brought." *Hughes v. Ford Motor Co.*, 677 F. Supp. 76, 77–78 (D. Conn. 1987). Thus, rather than provide a uniform standard on occupant restraint systems, FMVSS 208 would succumb to a patchwork of different jury standards in different states and, in all likelihood, different standards set by different juries in the same state. *Accord, Cox v. Baltimore County*, 646 F. Supp. at 764; *Vanover v. Ford Motor Co.*, 632 F. Supp. 1095, 1096 (E.D. Mo. 1986).

Second, judicial recognition of no airbag claims would effectively compel automobile manufacturers to abandon any design that omitted airbags, thereby depriving manufacturers of the flexibility that the Department of Transportation found necessary "for industry to develop the most effective [restraint] systems." *See* 49 Fed. Reg. 28,997, 29,001 (July 17, 1984). FMVSS 208 grants manufacturers a choice among approved occupant restraint systems. In contrast:

> Court decisions that create common law liability for a manufacturer's failure to install the air bag option in an automobile will effectively force automobile manufacturers to choose the air bag option over statutorily approved options. An automobile manufacturer faced with the prospect of choosing the air bag option, or facing potential exposure to compensatory and punitive damages for failing to do so, has but one realistic choice. A court decision that removes the element of choice authorized in the occupant crash safety regulations will frustrate the statutory scheme.

Baird v. General Motors Corp., 654 F. Supp. 28, 32 (N.D. Ohio 1986). *Accord, Wattelet v. Toyota Motor Corp.*, 676 F. Supp. 1039, 1041 (D. Mont. 1987); *Vanover v. Ford Motor Co.*, 632 F. Supp. at 1096; *Donnelly v. General Motors Corp.*, No. 86-576-JU (D. Ore. July 31, 1987), slip op. at 10; *Vasquez v. Ford Motor Co.*, No. 86-0657 PHX WPC (D. Ariz. Nov. 4, 1986), slip op. at 2.

Finally, no airbag litigation would contravene the federal purpose underlying enactment of 15 U.S.C. § 1410b, which prohibits the Department of Transportation from requiring airbags without prior Congressional approval after special hearing procedures. *See* 15 U.S.C. § 1410b(b)–(d). To allow state court juries, but not the federal agency charged with responsibility for motor vehicle safety, to require airbags without special hearing procedures and prior Congressional approval would clearly violate the purpose and intent of section 1410b. *Accord, Staggs v. Chrysler Corp.*, 678 F. Supp. 270, 272 (N.D. Ga. 1987); *Wattelet v. Toyota Motor Corp.*, 676 F. Supp. at 1040; *Baird v. General Motors Corp.*, 654 F. Supp. at 32; *Vasquez v. Ford Motor Co.*, slip op. at 2; *Schwartz v. Volvo, N. Am. Corp.*, No. CV 86-7701 (Ala. Cir. Ct. Mar. 10, 1988), slip op. at 5, 6.

Significantly, petitioner does not deny the existence of these purposes or policies underlying the Safety Act, FMVSS 208, or 15 U.S.C. § 1410b. Instead, as she has done throughout the appellate

proceedings, petitioner repeats three arguments,[3] all of which have been discredited by decades of Supreme Court precedent.

Petitioner first argues (Pet. 7) that the express preemption provision, section 1392(d), applies only to state statutes or administrative regulations, not to state court judgments. The Minnesota Court of Appeals, 416 N.W.2d at 840, correctly rejected this artificial distinction on the basis of this Court's celebrated language in *San Diego Building Trade Council v. Garmon*, 359 U.S. 236, 247 (1959):

> [R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the State's salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.

Accord, International Paper Co. v. Ouellette, 107 S. Ct. 805, 813 & 815 n. 19 (1987); *Chicago & Northwestern Transporation Co. v. Kalo Brick and Tile Co.*, 450 U.S. 311, 327 (1981).

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[3]Petitioner argues additionally (Pet. 9-11) that the Minnesota Court of Appeals misconstrued the intent of Congress regarding federal preemption of common law claims. This argument, of course, hinges upon petitioner's misinterpretation of the savings clause, *see* pp. 15-16 *infra*, and legislative history, *see* pp. 9-11 *supra*, of the Safety Act. Petitioner also argues (Pet. 11-12) that a letter from a former National Highway Traffic Safety Administration staff member to the plaintiff's attorney in *Dawson v. Chrysler Corp.*, 630 F.2d 950 (3rd Cir. 1980), establishes that Congress did not intend the Safety Act to preempt common law claims. Petitioner misconstrues the substance of this letter and, indeed, repeats the mistakes discussed at p. 6 *supra*. The letter only purports to address whether the Safety Act occupies the entire field of regulation, not whether an on-point federal standard preempts a non-identical state regulation applicable to the same aspect of vehicle performance or equipment. Indeed, the letter had no reason to discuss the preemption issue before this Court: (1) because the federal standard at issue in *Dawson*, FMVSS 214, applied to side door strength and therefore could not conflict with the plaintiff's alleged defect, insufficient rigidity of the vehicle frame; and (2) because *Dawson* involved a type of vehicle, a local government police car, which the Safety Act specifically excludes from operation of the preemption provision.

Petitioner next asserts (Pet. 8) that common law damage awards would complement, rather than frustrate, the Safety Act's concern for highway safety. This Court recently highlighted the fallacy of that argument in *International Paper Co. v. Ouellette*, at 813, which explicitly held that federal preemption analysis turns not only on the primary purpose of the federal statute at issue, but also on the method selected by Congress for accomplishing that purpose.

> In determining whether Vermont nuisance law "stands as an obstacle" to the full implementation of the [Clean Water Act], it is not enough to say that the ultimate goal of both federal and state law is to eliminate water pollution. A state law also is preempted if it interferes with the methods by which the federal statute was designed to reach this goal.

Thus, while Congress may have viewed highway safety as the primary goal of the Safety Act, it also believed in the establishment of uniform safety standards as the best method to achieve that goal. Accordingly, the Minnesota Court of Appeals properly

> recognized that the [Safety Act's] legislative history makes it clear that a "significant subsidiary purpose—itself intended to promote the primary purpose—was to create uniform motor vehicle safety standards." Allowing individual state juries and courts to create different standards clearly would frustrate this purpose.

416 N.W.2d at 841, citing *Cox v. Baltimore County*, 646 F. Supp. at 764; *Vanover v. Ford Motor Co.*, 632 F. Supp. at 1096.

Finally, petitioner argues (Pet. 10–11) that the savings clause, section 1397(c), preserves all common law claims and therefore her no airbag claim as well. This argument, however, rests on a fundamental misinterpretation of the purpose and effect of general savings clauses in federal statutes. As the Minnesota Court of Appeals recognized, 416 N.W.2d at 840, general savings clauses cannot preserve common law claims that frustrate the underlying purposes of a federal act. *See, e.g., International Paper Co. v. Ouellette*, 107 S. Ct. at 812 (Clean Water Act preempts Vermont common law nuisance action as inconsistent with federal regulatory

structure, despite savings clause providing that "[n]othing in this section shall restrict any rights which any person . . . may have under common law . . . to seek any other relief"); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986) (Death on the High Seas Act preempts state wrongful death statute as "unduly divergent" from uniform maritime law sought by Congress, despite savings clause stating that "[t]he provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this chapter"). Instead, savings clauses serve only to defeat a claim that Congress has occupied an entire field of regulation. *See, e.g., Chicago & Northwestern Transportation Co.*, 450 U.S. at 328 (savings clauses appear in federal statutes because, without them, "it might have been claimed on Congress having entered the field, the whole subject of liability . . . has been withdrawn from the state courts").

Only in this context does the legislative history of the Safety Act's savings clause make sense. If Congress had been silent on the future of common law actions after the Safety Act, the courts might have concluded from the presence of a preemption provision in the Act and from the comprehensive federal standards to follow that Congress intended to occupy the entire field of motor vehicle safety. Congress therefore included a savings clause in the Act so that in the words of Senator Magnuson, upon whom petitioner so heavily relies, "[c]ompliance with federal standards would **not necessarily** shield any person from broad liability in common law." *See* 111 Cong. Rec. 14230 (1966) (emphasis added). The "not necessarily" remarks thus confirm what respondents said at the outset: section 1392(d) preempts those common law claims "applicable to the same aspect of performance . . . or item of equipment" as a federal motor vehicle safety standard; however, section 1397(c) saves any claims based on aspects of performance or equipment not covered by a federal regulation.

3. Supreme Court Review of the Question Presented Seems Premature at This Time.

The question presented in this case—the preemptive effect of the Safety Act on no airbag claims—has not been decided by any other appellate court, state or federal; it has in fact just begun the "simmering" process. The First Circuit heard argument on this question in December 1987, but has not yet decided the case. *Wood v. General Motors Corp.*, 673 F. Supp. 1108 (D. Mass. 1987), appeal pending, No. 87-1750 (1st Cir.). Two cases presenting this issue also remain on appeal in the Tenth Circuit. *Richart v. Ford Motor Co.*, 681 F. Supp. 1462 (D.N.M. 1988), appeal pending, No. 88-8012 (10th Cir.) (neither briefed nor argued); *Kitts v. General Motors Corp.*, No. 85-0967 JC (D.N.M. Sept. 29, 1987), appeal pending, No. 87-2517 (10th Cir.) (briefed, but not argued).

Consideration of this question in a number of different contexts by a number of different courts would undoubtedly benefit this Court in its decision process. Especially here, therefore, where the Minnesota Court of Appeals resolved the preemption issue in the correct manner, where the decision conforms to the clear weight of federal authority, and where no conflict arises under Rule 17, there exists no reason why this Court should exercise discretionary review over the very first case.

CONCLUSION

The Court should deny this petition for a writ of certiorari.

Respectfully submitted,

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SUMMARY OF FEDERAL AND STATE CASES ADDRESSING PREEMPTIVE EFFECT OF SAFETY ACT ON NO AIRBAG CLAIMS

Federal Court

Baird v. General Motors Corp., 654 F. Supp. 28 (N.D. Ohio 1986) (implied, but no express, preemption)

Bass v. General Motors Corp., No. SA-86-CA-279 (W.D. Tex. July 24, 1987) (express and implied preemption)

Cox v. Ford Motor Co., 646 F. Supp. 761 (D. Md. 1986) (express and implied preemption)

Distler v. General Motors Corp., No. 4-86-821 (D. Minn. Sept. 3, 1987) (express and implied preemption)

Donnelly v. General Motors Corp., No. 86-576-JU (D. Ore. July 31, 1987) (express and implied preemption)

Fisher v. Chrysler Corp., No. 85-699-T (D. Mass. Feb. 9, 1987) (no preemption) (no written order or memorandum)

Heftel v. General Motors Corp., No. 85-1713 (D.D.C. Feb. 23, 1988) (express and implied preemption)

Hughes v. Ford Motor Co., 677 F. Supp. 76 (D. Conn. 1987) (implied preemption)

Kelly v. General Motors Corp., No. 87-0828 (W.D. La. Feb. 18, 1988) (implied preemption)

Kitts v. General Motors Corp., Civ. No. 85-0967 JC (D.N.M. Sept. 29, 1987), *interlocutory review granted*, No. 87-2517 (10th Cir.) (express and implied preemption)

Murphy v. Nissan Motor Corporation in U.S.A., 650 F. Supp. 922 (E.D.N.Y. 1987) (no preemption)

Richart v. Ford Motor Co., 681 F. Supp. 1462 (D.N.M. 1988) *interlocutory review granted*, No. 88-8012 (10th Cir.) (no preemption)

Ritt v. General Motors Corp., No. 86C1737 (N.D. Ill. Jan. 20, 1988) (express and implied preemption)

Schick v. Chrysler Corp., 675 F. Supp. 1183 (D.S.D. 1987) (implied, but no express, preemption)

Staggs v. Chrysler Corp., 678 F. Supp. 270 (N.D. Ga. 1987) (implied, but no express, preemption)

Surles v. Ford, No. CA4-87-270-K (N.D. Tex. May 10, 1988) (express preemption)

Vanover v. Ford Motor Co., 632 F. Supp. 1095 (E.D. Mo. 1986) (express and implied preemption)

Vasquez v. Ford Motor Co., No. CIV 86-0657 PHX WPC (D. Ariz. 1986), *motion for reconsideration denied*, No. CIV 86-0657 PHX WPC (D. Ariz. Feb. 19, 1987) (express and implied preemption)

Wattelet v. Toyota Motor Sales, U.S.A., Inc., 676 F. Supp. 1039 (D. Mont. 1987) (express and implied preemption)

Wood v. General Motors Corp., 673 F. Supp. 1108 (D. Mass. 1987), *interlocutory review granted*, No. 87-1750 (1st Cir.) (no preemption)

State Court

Aronowitz v. General Motors Corp., No. 23118/84 (N.Y. S. Ct. Mar. 18, 1988) (preemption)

Barfels v. Holman Imports, Inc., No. 85-1901-CB (Fla. 17th Cir. Ct. Aug. 20, 1986) (no preemption)

Burge v. American Honda Motor Co., Inc., No. 41-75-75 (Sup. Ct. Cal. June 30, 1987) (no preemption)

Gardner v. Honda Motor Company, Ltd., No. H-72107 (N.Y. S. Ct. Aug. 26, 1987) (preemption)

Garman v. Mazda Motor Corp., No. 85-13839-F (Tex. 116th Dist. Ct. Apr. 6, 1988) (preemption)

Gingold v. Audi-NSU-Auto Union A.G., No. 6155 (Pa. Ct. Cmmn. Pleas (May 12, 1988) (express and implied preemption, but summary judgment denied on other grounds)

Groves v. Chrysler Corp., No. 84-7-302 (Ore. 5th Cir. Ct. Mar. 15, 1988) (express preemption)

Kimbrel v. Jones, No. 85V-009 (Bleckley Cty. Ga. Sup. Ct. Nov. 19, 1987), *cert. granted*, No. 76473 (Ga. Ct. App.) (no preemption)

Little v. Chrysler Corp., No. 84-11-103 (Ore. Cir. Ct. Mar. 15, 1988) (express preemption)

Lynch v. Mims, No. GCG 85-0019 (Fla. 10th Cir. Ct. Aug. 20, 1985) (no preemption)

McLaughlin v. General Motors Corp., No. LK-27-2, (Va. Cir. Ct. May 2, 1988) (preemption)

Mackey v. American Honda Motor Co., No. 83CV-08-4508 (Ohio Ct. C.P. Feb. 17, 1987) (preemption)

Morgan v. Noble, No. 84-C1-136 (Ky. Cir. Ct. Feb. 17, 1985) (no preemption)

Munson v. Ford Motor Co., No. B-840,570 (Tex. 163rd Dist. Ct. May 16, 1986) (no preemption)

Pederson v. Ford Motor Co., No. 3AN-85-15565 (Alaska Super. Ct. Sept. 24, 1987) (preemption)

Phillips v. Namie, No. 85-33951-CA-07 (Fla. 11th Cir. Ct. Sept. 22, 1986) (preemption)

Picadio v. General Motors Corp., No. GD-85-14613 (Pa. Ct. C.P. Dec. 28, 1987) (no preemption)

Puzio v. General Motors Corp., No. L-072325-85 (N.J. Sup. Ct. Mar. 27, 1987) (preemption)

Ross v. Ford Motor Co., No. CV-119361 (Ohio Ct. C.P., May 5, 1987) (preemption)

Russell v. Johnson, No. 83-3931 CA-WJN (Fla. 20th Cir. Ct. July 17, 1987) (no preemption)

Salinas v. Yarborough, No. 85-6068-B (Tex. 117th Dist. Ct. Oct. 13, 1987) (no preemption)

Schwartz v. Volvo, N. Am. Corp., No. CV 86-7701 (Ala. Cir. Ct. Mar. 10, 1988) (express and implied preemption)

Soboscienski v. Ford Motor Co., No. 2NO-85-246 (Alaska Super. Ct. Oct. 28, 1986) (express preemption)

Steenbergen v. Ford Motor Co., No. 85-15718-C (Tex. 68th Dist. Ct. June 30, 1986) (no preemption)

Sutton v. Allenberg, No. 6551 (Id. Dist. Ct. Feb. 25, 1988) (preemption)

Wolfe v. General Motors Corp., No. CV 8720704 (Ohio Ct. C.P. Mar. 17, 1988) (preemption)